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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 54

UNITED STATES OF AMERICA EX REL. ELLEN KNAUFF, PETITIONER

v.

EDWARD J. SHAUGHNESSY, ACTING DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION SERVICE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinions of the District Court on the original hearing (R. 28-35) and on reargument (R. 54) are not reported. The opinion of the Court of Appeals (R. 60-67) is reported at 173 F. 2d 599.

JURISDICTION

The judgment of the Court of Appeals was entered March 11, 1949 (R. 67). The petition for a writ of certiorari was filed April 18, 1949, and was

granted May 2, 1949 (R. 68). The jurisdiction of this Court rests on 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

Petitioner, an alien "war bride," was ordered excluded from the country by the Attorney General as an alien whose entry would be prejudicial to the interests of the United States. She was denied a hearing before a board of special inquiry because the information on the basis of which the Attorney General found her excludable on that ground was confidential, the disclosure of which would be prejudicial to the public interest. The procedure followed was in accordance with executive regulations jointly issued by the Secretary of State and the Attorney General, pursuant to a Presidential Proclamation issued under the authority of the Act of May 22, 1918, as amended, a wartime and national emergency measure. The questions presented are:

1. Whether the procedure established pursuant to the statute, Proclamation, and regulations is consistent with the requirements of due process of law.

2. Whether the statute authorizing the Proclamation and regulations constitutes an unconstitutional delegation of legislative power.

3. Whether petitioner has an absolute right to enter the country as a "war bride" under the War Brides Act of December 28, 1945, notwithstanding

her excludability under the 1918 Act, as amended, and the Proclamation and regulations thereunder.

A question formerly presented, but which we believe to have become moot (see *infra*, pp. 18-21) is whether the executive regulations were, on October 6, 1948, when the original exclusion order was made, consistent with the Presidential Proclamation.

STATUTES, PROCLAMATION, AND REGULATIONS INVOLVED

The statutes, Presidential Proclamation, and regulations involved are set forth in Appendix A, *infra*, pp. 58-67.

STATEMENT

The facts are not in dispute. They may be summarized as follows:

Petitioner Ellen Knauff,[1] an alien, was born in Germany in 1915 (Ex. 14 [p. 1], R. 50), was last a citizen of Czechoslovakia (R. 6, 16, 18), and presently claims to be stateless (Ex. 14 [p. 2], R. 50). From January 1943 to May 1946 she served creditably in the British Royal Air Force, and was discharged as a flight sergeant (R. 10, 44). Thereafter she was employed by the American Military Government in Frankfurt, Germany, first as a "record analyst and monitor" in the Civil Censor-

[1] Petitioner's maiden name was Ellen Raphael (R. 3; Ex. 14 [p. 1], R. 50). Her name by her first marriage was Ellen Boxhornova (Ex. 14 [pp. 2, 3], R. 50), by which name she is referred to in those documentary exhibits in the record (e.g., R. 13, 14-15, 22) which antedate her second marriage, on February 28, 1948, to Kurt Knauff (R. 3).

ship Division from May 1946 to August 1947 (R. 13, 14, 29, 37) and later as a clerk typist in the Signal Division (R. 16, 18, 21, 22, 29, 37). She also rendered satisfactory service in both these latter capacities, according to written statements and recommendations of her supervisors (R. 13, 14-15, 16, 20, 21, 22, 48). On February 28, 1948, she married Kurt Knauff, a naturalized American citizen who had served in the armed forces of the United States during the Second World War and had been honorably discharged in January, 1946 (R. 3). The marriage took place in Frankfurt, where the husband was and still is a civilian employee of the United States Army (R. 3, 29, 38).

On August 14, 1948, petitioner sought to enter the United States as a "war bride" under the terms of the so-called War Brides Act of December 28, 1945 (*infra*, pp. 66-67), for the purpose of applying for naturalization (R. 4, 8, 29-30, 38). She had secured a temporary leave of absence from her position in the Signal Division in Frankfurt for this purpose (R. 10-11, 29, 38). Upon examination by an immigrant inspector at the port of New York, she was temporarily excluded, pursuant to 8 C.F.R. 175.57 (*infra*, pp. 64-66), as an alien whose entry was deemed to be prejudicial to the interests of the United States (R. 6). On October 6, 1948, pursuant to a recommendation of the Assistant Commissioner of Immigration and Naturalization, and on the basis of confidential information and evidence, the Attorney General, also under 8 C.F.R.

175.57, ordered petitioner permanently excluded, without a hearing before a board of special inquiry, as an alien whose entry into this country would be prejudicial to the interests of the United States (*ibid.*).

Thereafter, on October 8, 1948, in the District Court for the Southern District of New York, a petition for a writ of habeas corpus (R. 3-4) was filed on petitioner's behalf by her husband, who had returned to this country on a temporary leave of absence from his position in Germany upon learning of his wife's exclusion and detention at the port of entry (R. 11, 39). The petition challenged the legality of petitioner's exclusion "for security reasons" and averred her right to enter as a "war bride" under the terms of the Act of December 28, 1945 (R. 4). The writ issued (R. 2) and a return was filed (R. 6-7), which set forth the Attorney General's order excluding petitioner pursuant to 8 C.F.R. 175.57. In a traverse to the return (R. 8-11), petitioner reiterated and amplified the allegations of the petition and in addition set forth a copy of a letter from the Attorney General to Mr. Joseph D. Nunan, who had intervened on her behalf. In this letter, dated October 4, 1948, the Attorney General had advised Mr. Nunan (R. 9; see also R. 24) that—

> Since talking with you last week, I have again looked into the case of Mrs. Ellen Knauff.
>
> I can see no alternative to excluding her. She was formerly a paid agent of the Czecho-

> slovakian Government, and reported on American personnel assigned to the Civil Censorship Division in Germany. The Federal Bureau of Investigation feels that she would be a hazard to internal security.[2]

Petitioner stated in the traverse that "the facts stated in this letter are untrue" (R. 10) and that she believed she was "a victim of a foul denunciation of a woman jealous of my husband" (R. 11).

At a hearing on the writ on November 16, 1948 (R. 12), the District Court (Hulbert, D. J.) received in evidence various documentary exhibits offered on petitioner's behalf, including documents tending to show the creditable nature of her service in the British Royal Air Force and with the American Military Government in Germany (R. 13-22, 26-27) and the two letters from the Attorney General to Mr. Nunan mentioned above (R. 24, 25). The court heard argument of counsel (R. 12), but no testimony was adduced.

Following the hearing, the court entered an opinion and order (R. 28-35) dismissing the writ. A motion for reargument was then filed (R. 36), supported by affidavits of petitioner's attorney (R. 37-43, 52-53), to which were attached additional docu-

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[2] In a previous letter to Mr. Nunan, dated September 9, 1948, the Attorney General had said (R. 25):

"This will acknowledge your letter of August 27, on behalf of Mrs. Ellen Knauff.

"I recall her case very well and after giving it very careful consideration, signed the exclusion order, for security reasons. I regret very much that I haven't a more favorable report for you."

mentary exhibits (R. 44-50) giving further proof of petitioner's faithful services on behalf of the Royal Air Force (R. 44-47) and the American Military Government in Germany (R. 48-49), and including an application, executed by petitioner, indicating her intention to file a petition for naturalization (Ex. 14, R. 50). The motion for reargument was granted (R. 54), but the court adhered to its original decision in a brief memorandum opinion (*ibid.*) and again ordered the writ dismissed (R. 55). On appeal to the Court of Appeals for the Second Circuit, the order of the District Court was affirmed (R. 67).

On October 19, 1949, present the Attorney General, acting under the authority of Presidential Proclamation No. 2523, as amended on August 17, 1949 (see *infra*, pp. 58-60, and footnote 29, *infra*, pp. 60-61), considered petitioner's case *de novo* and entered a new order excluding her (Appendix B, *infra*, p. 68).

SUMMARY OF ARGUMENT

I

Petitioner contends that the Attorney General's exclusion order of October 6, 1948, is invalid, asserting that under the Presidential Proclamation as it stood at that time only the Secretary of State was empowered to make such an order. While it is not believed that the Presidential Proclamation was ever subject to such a construction, the point has become moot, for on August 17, 1949, the Proclamation was amended to provide expressly

that aliens may be excluded upon an order of the Attorney General, and on October 19, 1949, the Attorney General, acting under the amended proclamation and upon *de novo* consideration of the petitioner's case, issued a new order excluding her.

II

Petitioner's exclusion without a hearing, pursuant to executive regulations, did not deprive her of due process of law, nor were the regulations issued pursuant to a constitutionally objectionable delegation by Congress of legislative power.

A. There was no denial of due process. An alien has no constitutional right to a hearing for the purpose of establishing a claimed right to enter this country. Whatever rights he may have are wholly statutory in origin, and, at least in time of war or national emergency, may be restricted or withheld by Congress or by executive authority acting pursuant to statutory authorization.

1. Congress' power to exclude aliens entirely or to admit them on such terms as it chooses to prescribe is absolute, inhering in the very concept of national sovereignty. And Congress may commit the administration and enforcement of laws relating to aliens to executive officials. The power absolutely to exclude includes the power to exclude without a hearing. Where a hearing is guaranteed by statute or regulation, the courts may intervene to assure fairness in the hearing and compliance

with the requirements of the law in this respect. But nothing in the Constitution precludes Congress, or executive authority acting pursuant to congressional authorization, from directing the exclusion of an alien without a hearing for good cause. Particularly where the granting of a hearing would conflict with the national interest in time of war or national emergency, it may be withheld.

The rights of arriving aliens are to be distinguished from the rights of resident aliens. Resident aliens are entitled to the full protection of due process, and may not be deported without a hearing except as authorized by Congress in the exercise of its war power. But petitioner is an alien who, in contemplation of law, is without the country, asking leave to enter. Aliens in this class must accept the procedures governing their admission or exclusion which Congress and executive officials acting pursuant to statutory authority have prescribed. For them the procedure thus established is due process of law.

2. The denial of a hearing even to an arriving alien is, in practice, an extraordinary measure. A hearing is denied under the regulations only in "special" cases, where disclosure of the information or the source of the information on the basis of which the exclusion is ordered for security reasons would be contrary to the national interest. The power to order denial of a hearing in such cases stems from the Act of May 22, 1918, as

amended, which is effective only in time of war or national emergency. For the purposes of this statute, neither the war nor the emergency is over. Consequently, even if the power of Congress, or of executive authority acting pursuant to congressional authorization, to provide for the exclusion of an alien without a hearing under named conditions were doubtful but for the limitation of the exercise of the power to wartime and time of emergency, that limitation eliminates any doubt as to the constitutionality of the restriction. *Ludecke* v. *Watkins*, 335 U. S. 160.

B. The delegation of authority to make the regulations was valid. The Act of May 22, 1918, as amended, grants broad authority to the President, in time of war or national emergency, if he finds that "the interests of the United States" so require, to make rules and regulations adding to the restrictions and prohibitions already provided by law in respect of the admission of aliens. *Schechter Corp.* v. *United States*, 295 U. S. 495, on which petitioner relies in contending that this delegation of authority is unconstitutional, is distinguishable on several independent grounds.

1. The delegation relates essentially to an aspect of the foreign affairs of the United States. Exceptionally broad delegations of administrative authority have traditionally been recognized as valid in this field. *United States* v. *Curtiss-Wright Corp.*, 299 U. S. 304. Many acts and Joint Resolu-

tions of Congress, dating from the beginning of the nation's history, have delegated to the President in the field of foreign relations administrative authority no less sweeping than the statute at bar. Some of these acts and Joint Resolutions, all referred to with approval in the *Curtiss-Wright* case, were cast in language bearing striking resemblance to that of the statute here involved.

2. The delegation is valid on the independent ground that it is limited to time of war or national emergency, neither of which is over. Since the Constitution commits to the Executive and to Congress the exercise of the war power, which embraces "every phase of the national defense," it has necessarily given them wide scope for the exercise of judgment and discretion in determining the nature and extent of the threatened danger and in the selection of the means for resisting it. *Hirabayashi* v. *United States,* 320 U. S. 81. A striking illustration of the extent to which Congress may, during a war period, delegate power to executive officials is furnished by the Second War Powers Act, which founded the entire national program for rationing and allocation of material on a single sentence, authorizing the President to allocate materials "upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense," if he should be "satisfied that the fulfillment of requirements for the defense of the United States" would result in

shortages of materials available "for defense or for private account or for export." The validity of this sweeping delegation of power to the President has been uniformly sustained. The legislative history of the statute here involved shows that Congress deemed the broad authority it conferred on the President vital to the interests of the nation in time of war or national emergency, and considered detailed and piecemeal legislation on the subject "obviously impracticable." Since the Constitution demands neither the impossible nor the impracticable, the delegation here challenged is valid.

3. Even apart from the foreign affairs aspect of the legislation in issue and its limitation to time of war or national emergency, it contains a permissible delegation of authority. Considered in its historical and administrative context, it is plain that the "interests of the United States" which the President is to consider are only those relating to its security. So viewed, the standard established by Congress is not less definite than many other single standards which this Court has upheld.

III

Petitioner's status as a "war bride" does not exempt her from the inhibitions of the immigration laws generally. The War Brides Act of 1945 exempts persons to whom it applies only from those ordinarily applicable restrictions which are spe-

cifically enumerated in the Act. It expressly provides that those to whom its benefits apply may be admitted only if they are "otherwise admissible under the immigration laws." The Act of May 22, 1918, as amended, pursuant to which and to the regulations issued thereunder petitioner was excluded, is clearly an "immigration law" within the meaning of the War Brides Act. It is clear, moreover that nothing in the latter Act extinguishes war powers exercised under other statutes.

ARGUMENT

Congress has declared, in Section 1 (a) of the Act of May 22, 1918, as amended by the Act of June 21, 1941 (*infra*, p. 58), that "When the United States is at war or during the existence of the national emergency proclaimed by the President on May 27, 1941, * * * and the President shall find that the interests of the United States require that restrictions and prohibitions in addition to those [already provided by law] be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall * * * be unlawful * * * [f]or any alien to * * * enter * * * the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe."

Pursuant to the authority thus conferred on him, the President, on November 14, 1941, issued Procla-

mation No. 2523 (*infra*, pp. 58-60), which was in effect when petitioner sought entry into this country and is still in effect, with certain amendments made since the commencement of this habeas corpus proceeding (see footnote 29, *infra*, pp. 60-61), the significance of which is discussed at pp. 20-21, *infra*. In this Proclamation, the President, after declaring that "the exigencies of the present international situation and of the national defense require that restrictions and prohibitions, in addition to those otherwise provided by law, be imposed upon the departure of persons from and their entry into the United States," (*infra*, p. 59) ordered that thereafter "* * * no alien shall enter * * * the United States unless he is in possession of a valid unexpired permit to enter issued by the Secretary of State, * * * or is exempted from obtaining a permit to enter in accordance with the rules and regulations which the Secretary of State, with the concurrence of the Attorney General, is hereby authorized to prescribe * * *" (paragraph (3), first subparagraph, *infra*, p. 60). The Proclamation further ordered that "No alien shall be permitted to enter the United States if it appears to the satisfaction of the Secretary of State that such entry would be prejudicial to the interests of the United States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General" (paragraph (3), second subparagraph, *infra*, p. 60).

Discharging the responsibilities placed upon them by the above Proclamation, the Secretary of State and the Attorney General jointly issued regulations, which now appear in 8 C.F.R., Part 175, the pertinent portions of which are copied at pp. 61-66, *infra*. These regulations define eleven categories of aliens whose entry is "deemed to be prejudicial to the interests of the United States" (8 C.F.R., 1947 Supp., 175.53(a)-(k), *infra*, pp. 62-64).[3] Then, in 8 C.F.R., 1947 Supp., 175.57(a), *infra*, pp. 64-65, it is provided (1) that "Any alien, even though in possession of a permit to enter, or exempted * * * from obtaining a permit to enter, may be excluded temporarily if at the time he applies for admission * * * it appears that he is or may be excludable" under one of these categories; (2) that "Any alien so temporarily excluded by an official of the Department of Justice shall not be admitted * * * unless the Attorney General, after consultation with the Secretary of State, is satisfied that the admission of the alien would not be prejudicial to the interests of the United States"; and (3) that

[3] E.g., aliens who are members of or affiliated with "a political organization associated with or carrying out policies of any foreign government opposed to the measures adopted by the Government of the United States in the public interest, or in the interest of national defense, or in the interest of the common defense of the countries of the Western Hemisphere, or in the prosecution of the war" (category (b), *infra*, p. 62); aliens seeking to procure "secret information concerning the plans, preparations, equipment, or establishments for the national defense of, or the prosecution of the war by, the United States" (category (c), *infra*, p. 63); etc. The record does not show under which of the eleven categories petitioner was found by the Attorney General to be excludable.

"Any alien so temporarily excluded by any other official shall not be admitted * * * unless the Secretary of State is satisfied that the admission of the alien would not be prejudicial to the interests of the United States." Finally, in 8 C.F.R., 1947 Supp., 175.57(b), *infra*, pp. 65-66, it is provided that, where an official of the Department of Justice temporarily excludes an alien on the ground that he is or may be excludable under one or more of the eleven categories previously defined, "no hearing by a board of special inquiry shall be held until * * * such a hearing is directed by the Attorney General," and, further, that "In any special case the alien may be denied a hearing before a board of special inquiry * * * if the Attorney General determines that he is excludable under one of the [previously defined] categories * * * on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest."

On August 17, 1949, Proclamation No. 2523 was amended to provide that "* * * no alien * * * shall enter or be permitted to enter the United States if it appears to the satisfaction of the *Attorney General* that such entry would be prejudicial to the interests of the United States" [italics added]. In addition, "all existing regulations" under the original proclamation were ratified and confirmed. See Proclamation No. 2850, referred to in footnote 29, *infra*, pp. 6061.

Petitioner, an alien who has never resided in the United States, challenges the constitutionality of

the procedure under which she has been barred from entry into this country. In particular, she contends (1) that it was a denial of due process of law to deprive her of a hearing before a board of special inquiry for the purpose of determining whether in truth she is an alien whose entry would be prejudicial to the interests of the United States (Br. 6-14) and (2) that the procedure established by Presidential Proclamation No. 2523 and the regulations issued thereunder is the result of an unconstitutional delegation by Congress of its legislative power over the admission of aliens (Br. 26-30). She further contends that the War Brides Act of December 28, 1945 (*infra*, pp. 66-67), conferred upon her husband[4] some vaguely defined status which absolutely requires her admission to the country and overrides any other consideration which might be a ground for excluding her (Br. 21-24). She finally contends that the Attorney General's exclusion order of October 6, 1948, was invalid because, under the Presidential Proclamation as it then stood, only the Secretary of State was empowered to make such an order (Br. 22-23).[5]

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[4] The petitioner's husband can claim no standing in this proceeding. Petitioner alone is under detention following rejection of her application for admission. It is she who complains that her restraint is illegal, and the only question to be adjudicated is the propriety of that restraint. Any claim to relief must rest upon substantive or procedural rights available to her.

[5] Petitioner advances an additional argument, which, however, we think undeserving of extended discussion. The argument seems to be (Br. 30-41) that she should be granted relief in this proceeding because she desires to apply for

These points will be discussed in the order named except that, since the last point is believed to have become moot, the reasons for this belief will be stated at the commencement of the Argument.

I

Petitioner's Contention that the Regulations under which the Exclusion Order of October 6, 1948, Was Issued Are Inconsistent with the Presidential Proclamation, Has Become Moot.

Petitioner challenges the order excluding her, asserting that it was made by the wrong Cabinet officer. The argument is this:

At the time petitioner was ordered excluded, Presidential Proclamation No. 2523 of November 14, 1941, provided that "no alien shall be permitted to enter the United States if it appears to the satisfaction of the *Secretary of State* that such entry would be prejudicial to the interests of the United

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naturalization under Section 312 of the Nationality Act of 1940, 8 U.S.C. 712 (providing that an alien who is "in the United States," and whose citizen spouse is abroad in the employ of the United States, may, under certain designated additional conditions, be naturalized without having to comply with specified requirements of the law which would otherwise obtain). But, apart from the fact that petitioner is not yet "in the United States" in contemplation of law, she being rather deemed as stopped at the boundary while her right to enter is being adjudicated (*Kaplan* v. *Tod*, 267 U.S. 228, 230-231; *Nishimura Ekiu* v. *United States*, 142 U.S. 651, 661), we fail to perceive the relevance in this proceeding of her asserted intention to become naturalized. Petitioner has been barred from entering the United States under our immigration laws and the single ultimate issue before the Court is the validity of the administrative order excluding her. Her qualifications as an applicant for naturalization may be considered only by a naturalization court upon a petition regularly filed following lawful entry. Nationality Act of 1940, § 301, 8 U.S.C. 701.

States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General" [italics added] (paragraph (3), second subparagraph, *infra*, p. 60). Petitioner contends (Br. 22-23) that, under the Proclamation, only the Secretary of State was empowered to make the order of exclusion, and that, consequently, in so far as 8 C.F.R. 175.57(a) (*infra*, pp. 64-65) authorizes the Attorney General to make the order of exclusion, it is inconsistent with the above-quoted provision of the Proclamation. She accordingly contends that the exclusion order entered in this case by the Attorney General, though authorized by the cited regulation (*i.e.*, 8 C.F.R. 175.57(a)), is nevertheless invalid because not authorized by the Proclamation, whence the regulation derives its authority.[6] As noted by petitioner (Br. 23), *Visic* v. *Dever*, decided November 24, 1948, an unreported decision by District Judge Holland of the Southern District of Florida, is an authority for this view.[7]

For the reasons mentioned in the margin,[8] we do

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[6] This contention of petitioner was not advanced at any stage of the proceedings in the District Court. The point was raised for the first time on appeal.

[7] Judge Holland's brief opinion in the *Visic* case is reproduced at pp. 69-70 of petitioner's brief.

[8] It is to be noted that the Proclamation (paragraph (3), second subparagraph, quoted above in the text) provided that no alien *shall be permitted to enter* the United States if it appears to the satisfaction of the Secretary of State that *such entry would be prejudicial* to the interests of the United States, etc. It did *not* say that no alien could be *refused*

not share Judge Holland's views in this respect. However, the point would seem in any event to have lost all but academic interest in this case. On August 17, 1949, Proclamation No. 2523 was amended to read, "* * * no alien * * * shall enter or be permitted to enter the United States if it appears to the satisfaction of the *Attorney General* that such entry would be prejudicial to the interests of the United States" [italics added]. In addition, "[a]ll existing regulations" under the original Proclamation were ratified and confirmed. See Proclamation No. 2850, referred to in footnote 29, *infra*, pp. 60-61. Subsequently, on October 19, 1949, the present Attorney General, upon *de novo* consideration of petitioner's case, entered a new order excluding her (see Appendix B, *infra*, p. 68). The alleged inconsistency between regulation 8 C.F.R. 175.57(a) and Proclamation No. 2523 in its original form—and, by the same token, the alleged invalidity of the original order of ex-

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permission to enter *unless* the Secretary of State deemed the entry prejudicial. With this distinction in mind, we think the following a legitimate interpretation of the Proclamation: If the Secretary of State deemed the entry of an alien prejudicial to the nation's interests, he could exclude him regardless of a possible contrary opinion on the part of the Attorney General. But in the absence of an express and definitive decision by the Secretary of State to exclude the alien, the Attorney General could make the decision to exclude. The Attorney General, in short, could himself either admit or exclude the alien, subject only to the paramount authority of the Secretary of State to order exclusion "if it appears to [his] satisfaction * * * that such entry would be prejudicial to the interests of the United States * * * ".

clusion—would therefore now seem to be moot issues.[9]

II

The Procedure Whereby Petitioner, Pursuant to a Presidential Proclamation Issued under Statutory Authority and Administrative Regulations Issued under the Proclamation, Was Excluded from the United States Without a Hearing As An Alien Whose Entry Would Be Prejudicial to the National Interests Was Not Unconstitutional Either As a Denial of Due Process of Law or as Involving an Invalid Delegation of Legislative Power.

A. *An alien has no right under the Constitution to a hearing for the purpose of establishing a claimed right to enter the United States; he has only such rights as Congress may give him, and, certainly in time of war or national emergency, Congress (or executive agencies acting pursuant to congressional authorization) may restrict or withhold such rights.*—1. Petitioner's major complaint in this case is that she had a right under the Fifth Amendment to some kind of hearing to establish her right to enter the United States, and that denial of such a hearing was a deprivation of freedom without due process of law which neither Congress nor any executive authority acting pur-

[9] That this is true is shown by a consideration of the consequence for petitioner of a reversal of the judgments below on the sole ground that the original order of exclusion was made by the wrong Cabinet officer. In that event, the new order of exclusion, entered by the present Attorney General, would still be outstanding against her. And, in view of the amendment of Proclamation No. 2523 referred to in the text, this order is not subject to the criticism—now made by petitioner in respect of the original order—that it is unauthorized by the Presidential Proclamation.

suant to congressional authorization can, consistently with that Amendment, impose (Br. 6-14). We submit, however, that, pretermitting the question of whether an alien who has never resided or indeed set foot in the United States has any rights whatever under the Constitution (cf. *United States* v. *Ju Toy*, 198 U. S. 253, 263), this contention is clearly unsound.

If Congress—instead of empowering the President, as it did, in time of war or national emergency, to impose "restrictions and prohibitions" on the admission of aliens in addition to such restrictions and prohibitions as were already provided for by law—had itself enacted in detail those provisions of the regulations now under attack (including the crucial provision that the Attorney General might decline to accord an alien the normal statutory hearing before a board of special inquiry where, on the basis of confidential information in his possession, the disclosure or revelation of the sources of which would be prejudicial to the public interest, he determines that the entry of the alien would be prejudicial to the interests of the United States), such legislation would clearly be within the constitutional power of Congress to enact. For it has long been settled that Congress' power to exclude aliens entirely or to admit them on such terms and conditions as it chooses to prescribe is absolute. *United States ex rel. Volpe* v. *Smith*, 289 U. S. 422, 425; *Low Wah Suey* v. *Backus*, 225 U. S. 460,

467-468; *Oceanic Navigation Co.* v. *Stranahan*, 214 U. S. 320, 339-340; *Turner* v. *Williams*, 194 U. S. 279, 289-290; *The Japanese Immigrant Case*, 189 U. S. 86, 97; *Wong Wing* v. *United States*, 163 U. S. 228, 237; *Fong Yue Ting* v. *United States*, 149 U. S. 698, 704-713; *Nishimura Ekiu* v. *United States*, 142 U. S. 651, 659; *The Chinese Exclusion Case*, 130 U. S. 581, 603-604. "[O]ver no conceivable subject is the legislative power of Congress more complete * * *. * * * As the authority of Congress over the right to bring aliens into the United States embraces every conceivable aspect of that subject, it must follow that if Congress has deemed it necessary to impose particular restrictions on the coming in of aliens * * *, * * * the constitutional right of Congress to enact such legislation is the sole measure by which its validity is to be determined by the courts." *Oceanic Navigation Co.* v. *Stranahan, supra*, 214 U. S. at 339-340. The existence of such unqualified power is inherent in national sovereignty. *Turner* v. *Williams, supra*, 194 U. S. at 290; *Nishimura Ekiu* v. *United States, supra*, 142 U. S. at 659; *The Chinese Exclusion Case, supra*, 130 U. S. at 603-604. And it is settled that where Congress prescribes conditions under which an alien may enter the United States it may commit the administration and enforcement of such laws to executive officers of the Government. *Low Wah Suey* v. *Backus, supra*, 225 U. S. at 467-468; *United States* v. *Ju Toy, supra*, 198

U. S. at 263; *The Japanese Immigrant Case*, *supra*, 189 U. S. at 97; *Fok Yung Yo* v. *United States*, 185 U. S. 296, 302; *Lem Moon Sing* v. *United State*, 158 U. S. 538, 547; *Fong Yue Ting* v. *United States*, *supra*, 149 U. S. at 713.

While petitioner apparently is aware of these well-settled principles, she contends nevertheless that there can be no constitutional authority to deny her a hearing—an opportunity to offer proof of her eligibility to enter and to be confronted with and given a chance to rebut any opposing evidence.[10] But obviously the power absolutely to exclude includes the power to exclude without a hearing. It is true that it has been said in other contexts that an alien seeking to enter the United States is entitled to a fair hearing. This concept

[10] There is not, of course, and has not been anything to prevent petitioner from presenting to the Attorney General any evidence at her command to show that her entry would not be prejudicial to the national interest—that he is mistaken in considering her entry a security risk. In fact, the record shows that she has availed herself of just such an opportunity in having Mr. Nunan (see pp. 5-6, *supra*, and footnote 2, *supra*, p. 6) intercede with the Attorney General on her behalf. Likewise, all the documentary evidence filed by her in the habeas corpus proceeding in her attempt to show she is not a security risk could just as well have been submitted to the Attorney General with a request to reconsider his decision to exclude her. Petitioner was made aware, of course, when she was ordered excluded, of the general ground of her exclusion, *viz.*, that her entry was deemed prejudicial to the national interest (see R. 4), though the precise category (8 C.F.R. 175.53, 1947 Supp., (a)-(k)) under that general heading into which her case was considered to fall was evidently not made known to her. Her awareness that the Attorney General considered her a security risk on the basis of confidential information that she "was formerly a paid agent of the Czechoslavakian Government, and reported on American personnel assigned to the Civil Censorship Division in Germany" (*supra*, pp. 5-6) was fortuitous, resulting from the Attorney General's advice to that effect to Mr. Nunan, who in turn disclosed this advice to petitioner.

probably originated in *Chin Yow* v. *United States*, 208 U. S. 8, 12, where it was said:

> * * * The decision of the Department is final, but that is on the presupposition that the decision was after a hearing in good faith, however summary in form. * * *

But that case involved an applicant for admission who claimed to be a *citizen*, a fact which manifestly distinguishes such a situation from one where, as here, there is no such claim. Cf. *Bilokumsky* v. *Tod*, 263 U. S. 149, 152-153; *Ng Fung Ho* v. *White*, 259 U. S. 276, 284-285. Still more important, *Chin Yow's* case and other decisions which have affirmed the right of an alien to a fair hearing in exclusion cases have been rendered under statutes or administrative regulations which provided for a hearing.[11] But where the applicable statutes or regulations do not explicitly require a hearing, none need be accorded. *Nishimura Ekiu* v. *United States, supra*, 142 U. S. at 663. Where a hearing is required by statute or regulation, the courts interceded only to assure compliance with the requirements of the applicable statute and regulations. Cf. *Johnson* v. *Shaughnessy*, 336 U. S. 806. But there is clearly nothing in the Constitution which precludes Con-

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There is, incidentally, nothing in the record to indicate that this is the full extent of the Attorney General's information concerning petitioner. Moreover, the Attorney General did not reveal to Mr. Nunan the sources of even that information which he mentioned in his letter.

[11] In the ordinary case, the arriving alien whose right to enter is questioned is given a full hearing before a board of special inquiry, with the right to appeal to the Attorney General from an adverse decision. See §§ 16 and 17 of the Immigration Act of 1917, 8 U.S.C. 152, 153, copied in footnote 30, *infra*, pp. 65-66.

gress, or executive authority acting pursuant to congressional authorization, from directing the exclusion of an arriving alien without a hearing when the granting of such a hearing would conflict with the national interest during time of war or other national emergency. As this Court stated in *Nishimura Ekiu* v. *United States, supra,* 142 U. S. at 660:

> An alien immigrant, prevented from landing by any such [executive] officer claiming authority to do so under an act of Congress, and thereby restrained of his liberty, is doubtless entitled to a writ of *habeas corpus* to ascertain whether the restraint is lawful. [Citing cases.] And Congress may, if it sees fit, * * * authorize the courts to investigate and ascertain the facts on which the right to land depends. But, on the other hand, the final determination of those facts may be entrusted by Congress to executive officers; and in such a case, as in all others, in which a statute gives a discretionary power to an officer, to be exercised by him upon his own opinion of certain facts, he is made the sole and exclusive judge of the existence of those facts, and no other tribunal, unless expressly authorized by law to do so, is at liberty to reexamine or controvert the sufficiency of the evidence on which he acted. [Citing cases.] It is not within the province of the judiciary to order that foreigners who have never been naturalized, nor acquired any domicil or residence within the United States, nor even been admitted into the

> country pursuant to law, shall be permitted to enter, in opposition to the constitutional and lawful measures of the legislative and executive branches of the national government. *As to such persons, the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.* [Citing cases.] (Italics added.)

Petitioner's constitutional arguments are founded in part on a failure to observe the distinction between the deportation of aliens residing within the United States and the exclusion of aliens who, never having resided or even been physically present in the country, seek to enter. The alien who resides here and who is sought to be deported may claim the full protection of the due process clause of the Constitution. *Bridges* v. *Wixon*, 326 U. S. 135, 154, 156; *Vajtauer* v. *Commissioner of Immigration*, 273 U. S. 103, 106; *Tisi* v. *Tod*, 264 U. S. 131, 133-134; *Bilokumsky* v. *Tod, supra*, 263 U. S. at 156-157; *Ng Fung Ho* v. *White, supra*, 259 U. S. at 284-285; *Zakonaite* v. *Wolf*, 226 U. S. 272, 274-275.[12] But petitioner is an alien seeking entry to the United States. She has gained no foothold here. In contemplation of law she is regarded as stopped at the boundary line while her eligibility to enter is adjudicated. *Kaplan* v. *Tod*, 267 U. S.

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[12] Even in deportation proceedings, however, due process does not necessarily, and in all cases, require that a hearing be granted. The war power of Congress enables it constitutionally to authorize the deportation of an alien enemy without a hearing. *Ludecke* v. *Watkins*, 335 U.S. 160, 171-172.

228, 230; *Chin Yow* v. *United States, supra,* 208 U. S. at 12-13; *United States* v. *Ju Toy, supra,* 198 U. S. at 263; *Nishimura Ekiu* v. *United States, supra,* 142 U. S. at 661. A person so situated is not entitled to claim the full protection of the Constitution, even if he claims to be an American citizen, which petitioner does not. *Quon Quon Poy* v. *Johnson,* 273 U. S. 352, 357-358; *Ng Fung Ho* v. *White, supra,* 259 U. S. at 282; *United States* v. *Ju Toy, supra,* 198 U. S. at 263; *United States ex rel. Medeiros* v. *Watkins,* 166 F. 2d 897 (C. A. 2). Aliens seeking entry must accept the procedures governing their admission or exclusion which Congress and executive officials, acting pursuant to statutory authority, have prescribed. That principle was found applicable by the only court, besides the courts below,[13] which has passed directly upon the constitutionality of the procedures here challenged. In *Kaminer* v. *Clark,* decided March 7, 1949 (unreported), a three-judge District Court for the District of Columbia held in a brief *per curiam* opinion:

> Without expressing any opinion as to whether the plaintiff has pursued a proper remedy, the Court is of the opinion that an

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[13] Subsequent to the decision of the Court of Appeals in the instant case, another judge of the District Court for the Southern District of New York (Kaufman, D.J.), on the authority of the Court of Appeals' decision in this case, sustained the validity of the legislation and executive regulations involved herein. *United States ex rel. Vajta* v. *Watkins,* decided July 11, 1949, not yet reported.

alien seeking entry into the United States has no standing to attack the constitutionality of an act of Congress and that in any event the act in question is constitutional.[14]

2. The denial of a hearing even to an alien seeking admission is, in fact, an extraordinary measure, invoked only in those exceptional or "special" (8 C.F.R. 175.57(b), *infra*, pp. 65-66) cases where the disclosure of the information on the basis of which the exclusion is ordered, or revelation of the source of that information, would be prejudicial to the public interest. This authority stems immediately from Presidential Proclamation No. 2523 (*infra*, pp. 58-60) and ultimately from § 1 of the Act of May 22, 1918, as amended (*infra*, p. 58). Hence it is an authority that may be exercised only in time of war or the existing national emergency. Neither the war nor the national emergency proclaimed May 27, 1941 (6 F.R. 2617), had terminated when petitioner was ordered excluded without a hearing. Neither has terminated yet. *Ludecke* v. *Watkins*, 335 U. S. 160, 169-170; *Woods* v. *Miller Co.*, 333

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[14] Following the decision by the three-judge court upholding the constitutionality of the statute and the Proclamation and regulations thereunder, the cause was remanded to a one-judge court. The latter court dismissed the action, which was a suit for a declaratory judgment, and the dismissal was affirmed on appeal to the Court of Appeals for the District of Columbia Circuit (*Kaminer* v. *Clark*, decided July 11, 1949, not yet reported, pending on petition for a writ of certiorari, No. 346) on the ground that the action for a declaratory judgment, if such relief was obtainable at all in view of the availability of the remedy of habeas corpus, must be sought in the District Court for the Southern District of New York, where Kaminer was detained in custody.

U. S. 138, 141; see Presidential Proclamation No. 2714 of December 31, 1946 (12 F.R. 1), proclaiming the cessation of hostilities, but noting that "a state of war still exists." [15] Nor is the continued existence of the state of war, and particularly of the national emergency, a merely technical status. See *Ludecke* v. *Watkins, supra,* 335 U. S. at 169, footnote 14. The continuing reality of the emergency is indeed a matter of such common knowledge that the point need not be labored. Consequently, even if the power of Congress—or of executive authority acting pursuant to congressional authorization—to provide for the exclusion of aliens without a hearing under named conditions were doubtful *but for* the limitation of the exercise of the power to time of war or national emergency, that limitation places the constitutionality of the restriction beyond question.

Many cases have described the broad sweep of the war powers. *E.g., Woods* v. *Miller Co., supra; Korematsu* v. *United States,* 323 U. S. 214; *Hirabayashi* v. *United States,* 320 U. S. 81; *Hamilton* v. *Kentucky Distilleries Co.,* 251 U. S. 146. Particularly relevant here is *Ludecke* v. *Watkins, supra,* 335 U. S. 160, sustaining the validity of the Alien Enemy Act of 1798, which empowers the President, in time of war, to apprehend, restrain, secure, and remove from the country all alien ene-

[15] The Act of July 25, 1947, c. 327, 61 Stat. 449, rescinded war powers granted under various enumerated statutes, and declared the war at an end for the purposes of those statutes. This enumeration and rescission did not include the war powers conferred under the Act of May 22, 1918, as amended.

mies fourteen years of age and over residing here. By proclamation, which was likewise sustained, the President, on July 14, 1945, had directed the removal from the country of all alien enemies "deemed by the Attorney General to be dangerous to the public peace and safety of the United States" (335 U. S. at 163). The fact that no hearing was required to effect removal was not considered by the Court a valid argument against the constitutionality of the Act or the proclamation. "The fact that hearings are utilized by the Executive to secure an informed basis for the exercise of summary power does not argue the right of courts to retry such hearings, nor bespeak denial of due process to withhold such power from the courts" (335 U. S. at 171-172). Thus the *Ludecke* case parallels in important particulars the case at bar. There, too, the statute directed the President to take measures to safeguard national security in time of war. There, too, the President had delegated his authority to the Attorney General, authorizing him to deport alien enemies whom he deemed dangerous to public peace and safety. There the Attorney General was authorized to act without the formal hearing ordinarily provided in cases of deportation of resident aliens to satisfy requirements of due process. The *Ludecke* decision and the many cases cited therein thus completely refute petitioner's challenge of the validity of the procedure followed in the instant case, both in respect of the due process and the delegation-of-

power arguments, which latter will be dealt with in detail under subpoint B, *infra*, pp. 34-53. Indeed, the statute and regulations involved in the case at bar are, we think, in one important respect, less susceptible to objection on constitutional grounds than those involved in the *Ludecke* case. For, though Ludecke was an enemy alien, he was a *resident* [16] alien who had been ordered deported, and resident aliens, as we have seen, have traditionally been recognized as entitled to the full protection of the due process guaranty of the Constitution. Petitioner, on the other hand, is a stranger to our shores.[17]

We submit, therefore, for the reasons stated, that petitioner has failed to show that the denial to her of the hearing before a board of special inquiry normally accorded to entering aliens of doubtful eligibility was a denial of due process of law. The withholding of such a hearing was occasioned by the fact that the Attorney General was in possession of confidential information, the disclosure of which (or the sources of which) at a public hear-

[16] He had lived in this country since some time prior to 1937 (335 U.S. at 162, footnote 3).

[17] Petitioner attempts to distinguish the *Ludecke* case on the ground that "Ludecke was not a war bride and the construction of the War Bride Act was not attempted in that case" (Br. 24). We show below, however (see point III, *infra*, pp. 53-57), that the War Brides Act, which alone gives such persons special advantages, does not and was never intended to override, or render such persons exempt from, the general provisions of the immigration laws (which include the statutory and executive provisions of law here involved), except as expressly provided therein. The War Brides Act contains no provision excepting war brides from the provisions of the Act of May 22, 1918, as amended.

ing would have been prejudicial to the national interest, and which satisfied him that petitioner is an alien whose admission to the country would constitute a security risk. The decision to withhold a hearing was made pursuant to express executive regulations formulated by the Secretary of State with the Attorney General's concurrence, under the authority of a Presidential Proclamation issued pursuant to a valid Act of Congress, and effective only in time of war or national emergency. The precise reason why, in the judgment of the Attorney General, it would be prejudicial to the nation's interests in these days of crisis publicly to reveal the confidential information which convinced him that petitioner's entry would constitute a security risk—whether it be that disclosure would jeopardize and possibly silence confidential informants abroad, on whom we must rely in order to keep alert to dangers to our security, or whether it be some other, equally cogent reason—cannot be known to petitioner, to us, or to the courts. Cf. *C. & S. Air Lines* v. *Waterman Corp.*, 333 U. S. 103, 111. And to require the Attorney General, as a condition of his power to order exclusion without a hearing, to make known his reasons for believing public disclosure of the grounds of his order to be detrimental to the public interest—so that a court in a judicial proceeding may be able to appraise the adequacy of the reasons and thus evaluate the necessity for such an order and its consistency with the normal requirements of due process—is mani-

festly absurd. For the damage sought to be prevented would then be done.

If it be argued that to exclude even an alien stranger from our shores without a hearing and without disclosure of the information on the basis of which the action is taken is not in keeping with our traditional democratic processes, the plain answer is that the desirability of adhering to these traditional democratic processes has never been thought, where aliens are concerned and particularly in time of war or national emergency, to override the exigencies of national security. Like the removal order involved in *Ludecke* v. *Watkins, supra*, the Attorney General's order of exclusion in this case is, we submit, not subject to judicial review.[18]

B. *The procedure whereby petitioner was excluded without a hearing pursuant to Presidential Proclamation and executive regulations thereunder was established pursuant to a valid delegation of administrative authority.*—Section 1(a) of

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[18] Compare *United States* v. *Curtiss-Wright Corp.*, 299 U.S. 304 (discussed at pp. 36-44, *infra*, in connection with the challenge of the statute here involved as an unconstitutional delegation of legislative power), where the Court observed, with reference to the President's powers in the field of foreign relations (299 U.S. at 320): "* * * Moreover, he, not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries, and especially is this true in time of war. *He has his confidential sources of information.* He has his agents in the form of diplomatic, consular and other officials. *Secrecy in respect of information gathered by them may be highly necessary, and the premature disclosure of it productive of harmful results.* * * *" [italics added]. See also *C. & S. Air Lines* v. *Waterman Corp.*, *supra*, 333 U.S. 103, 111-112.

the Act of May 22, 1918, as amended (*infra*, p. 58)—the statutory basis of the Proclamation and regulations pursuant to which petitioner was ordered excluded without a hearing—provides in relevant part that—

> When the United States is at war or during the existence of the national emergency proclaimed by the President on May 27, 1941, or as to aliens whenever there exists a state of war between, or among, two or more states, and the President shall find that the interests of the United States require that restrictions and prohibitions in addition to those provided otherwise than by this Act be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall * * * be unlawful—
>
> (a) For any alien to * * * enter or attempt to * * * enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe; * * *.

Petitioner challenges the validity of this statute as containing an unconstitutional delegation of legislative power (Br. 26-30). She relies on *Schechter Corp.* v. *United States*, 295 U. S. 495, 529-542. The *Schechter* case is distinguishable, however, on several independent grounds, and the delegation here challenged is clearly valid. First, the dele-

gation here in issue is one essentially relating to foreign affairs, and delegations in this field no less broad than that now challenged have been recognized by this Court as constitutionally unobjectionable. Secondly, apart from the foreign affairs aspect of the legislation, the broad delegation is warranted as a justifiable wartime and emergency measure. Finally, even if the delegation in question were not a wartime exercise of the sovereign's power to regulate external affairs, the standard established by Congress is, when considered in its historical and administrative context, quite as definite as other single standards for the executive exercise of delegated authority which this Court has upheld.

1. *The delegation relates essentially to foreign affairs, in respect of which exceptionally broad delegations of administrative authority have traditionally been recognized as valid.*—In *United States* v. *Curtiss-Wright Corp.*, 299 U. S. 304,[19]

[19] The decision sustained the validity, as against the claim that there had been an unconstitutional delegation of legislative power to the President, of a Joint Resolution of Congress providing that "if the President finds that the prohibition of the sale of arms and munitions of war in the United States to those countries now engaged in armed conflict in the Chaco may contribute to the reestablishment of peace between those countries, and if * * * he makes proclamation to that effect, it shall be unlawful to sell, except under such limitations and exceptions as the President prescribes, any arms or munitions of war in any place in the United States to the countries now engaged in that armed conflict, or to any person, company, or association acting in the interest of either country, until otherwise ordered by the President or by Congress" (299 U.S. at 312).

this Court carefully distinguished congressional delegations of power to the executive in the field of domestic affairs from such delegations in the field of foreign affairs. The Court pointed out that constitutional restrictions on delegations of the former type are far more stringent than in the case of the latter for the reason that, whereas Congress derives from the states its power to legislate in domestic matters, it possesses its legislative power in the field of foreign affairs as an intrinsic attribute of sovereignty, inherited directly from the British Crown on the occasion of the separation of the colonies as a unit from Great Britain (299 U. S. at 315-317). "It results," the Court said (299 U. S. at 318), "that the investment of the federal government with the powers of external sovereignty did not depend upon the affirmative grants of the Constitution." Among such powers, possessed by the Government, no' derivately from the states, but as an inherent attribute of sovereignty, the Court included (*ibid.*) the powers to declare and wage war, conclude peace, make treaties, maintain diplomatic relations with other sovereigns, acquire territory by discovery and occupation, *expel undesirable aliens,* etc. The Court further pointed out that in this "vast external realm, with its important, complicated, delicate and manifold problems," the President occupies a unique position; he "alone has the power to speak or listen as a representative of the nation" (299 U. S. at 319). Legislation in the field of foreign

affairs, observed the Court, "must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved. Moreover, he, not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries, and especially is this true in time of war. He has his confidential sources of information. He has his agents in the form of diplomatic, consular and other officials. Secrecy in respect of information gathered by them may be highly necessary, and the premature disclosure of it productive of harmful results" (299 U. S. at 320). When Congress authorizes the President to act in the field of foreign relations, the Court further stated (299 U. S. at 321-322), it "properly bears in mind the important consideration that the form of the President's action—or, indeed, whether he shall act at all—may well depend, among other things, upon the nature of the confidential information which he has or may thereafter receive, or upon the effect which his action may have upon our foreign relations. This consideration, in connection with what we have already said on the subject, discloses *the unwisdom of requiring Congress in this field of governmental power to lay down narrowly definite standards by which the President is to be governed*" [italics added].

"In the light of the foregoing observations," the Court concluded (299 U. S. at 322),

> * * * it is evident that this court should not be in haste to apply a general rule which will have the effect of condemning legislation like that under review as constituting an unlawful delegation of legislative power. The principles which justify such legislation find overwhelming support in the unbroken legislative practice which has prevailed almost from the inception of the national government to the present day.

In substantiation of this conclusion, the Court reviewed many acts and Joint Resolutions of Congress, dating practically from the beginning of the nation's history, involving delegations of administrative authority to the President in the field of foreign relations no less sweeping than the Joint Resolution under consideration in that case or the Act involved in the case at bar (299 U. S. at 322-327, and see footnote 2, pp. 324-326). Some of the statutes reviewed were, indeed, cast in language bearing striking resemblance to that of the statute now challenged. Examples of such statutes and Joint Resolutions are given below:

The Act of March 3, 1795, c. 53, 1 Stat. 444 (see 299 U. S. at 322-323), authorized the President to permit the exportation of arms, cannon, and military stores, the law prohibiting such exports to the contrary notwithstanding, the only prescribed guide for his action being that such exports should be "in cases connected with the security of the com-

mercial interest of the United States, and for public purposes only."

The Act of February 9, 1799, c. 2, § 4, 1 Stat. 615 (see 299 U. S. at 323), authorized the President, "if he shall deem it expedient and consistent *with the interest of the United States,*" to issue orders remitting and discontinuing certain restraints and prohibitions imposed by the Act, either with respect to the French Republic, or to any island, port, or place belonging thereto, "with which a commercial intercourse may safely be renewed," and also to revoke any such order "whenever, in his opinion, *the interest of the United States* shall require."[20]

The Act of February 27, 1800, c. 10, § 6, 2 Stat. 9 (see 299 U. S. at 323), conferred similar authority on the President, qualified in virtually identical language.

The Act of February 28, 1806, c. 9, 2 Stat. 351 (see 299 U. S. at 324), prohibited all commercial intercourse between residents of the United States and residents of any part of the Island of St. Domingo not under French sovereignty, and prescribed penalties and forfeitures for its violation. Notwithstanding the positive provisions of the Act, however, the President was authorized, by § 5, to issue orders at any time remitting and discontinuing the restraints and prohibitions imposed by the Act "if he shall deem it expedient and consistent with *the interests of the United States*" to do so.

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[20] Italics herein are supplied.

The Act of December 19, 1806, c. 1, 2 Stat. 411 (see 299 U. S. at 324, footnote 2), suspended the operation, until a designated date, of a certain embargo statute relating to imports, and, by § 3, authorized the President further to suspend its operation "if in his judgment *the public interest* should require it."

The Act of April 22, 1808, c. 52, 2 Stat. 490 (see 299 U. S. at 324-325, footnote 2), authorized the President, in the event that suspension of hostilities between the belligerent powers of Europe or changes in their measures affecting neutral commerce should render American commerce "sufficiently safe, in the judgment of the President," to suspend an existing embargo on all ships in American ports "in whole or in part" and "under such exceptions and restrictions * * * as *the public interest and the circumstances of the case* may appear to require."

The Joint Resolution of April 22, 1898, 30 Stat. 739 (see 299 U. S. at 325), authorized the President, "in his discretion, and with such limitations and exceptions as shall seem to him expedient," to prohibit the export of coal or other material used in war from any seaport of the United States "until otherwise ordered by the President or by Congress."

Following its review of the numerous Acts and Joint Resolutions of Congress of the type set forth above, the Court in the *Curtiss-Wright* case reached

the following conclusions, which, we submit, are virtually dispositive of petitioner's present contention that the statute at bar contains an unconstitutional delegation of legislative power:

> Practically, every volume of the United States Statutes contains one or more acts or joint resolutions of Congress authorizing action by the President in respect of subjects affecting foreign relations, which either leave the exercise of the power *to his unrestricted judgment, or provide a standard far more general than that which has always been considered requisite with regard to domestic affairs.* * * * [299 U. S. at 324] (italics added).
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> * * * * * *
>
> The result of holding that the joint resolution here under attack is void and unenforceable as constituting an unlawful delegation of legislative power would be to stamp this multitude of comparable acts and resolutions as likewise invalid. And while this court may not, and should not, hesitate to declare acts of Congress, however many times repeated, to be unconstitutional if beyond all rational doubt it finds them to be so, an impressive array of legislation such as we have just set forth, enacted by nearly every Congress from the beginning of our national existence to the present day, must be given unusual weight in the process of reaching a correct determination of the problem. A legislative practice such as we have here, evidenced not by only occasional instances, but marked by the movement

> of a steady stream for a century and a half of time, goes a long way in the direction of proving the presence of unassailable ground for the constitutionality of the practice, to be found in the origin and history of the power involved, or in its nature, or in both combined. [299 U. S. at 327-328.]
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> * * * * *
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> The uniform, long-continued and undisputed legislative practice just disclosed rests upon an admissible view of the Constitution which, even if the practice found far less support in principle than we think it does, we should not feel at liberty at this late day to disturb. [299 U. S. at 329.][21]

That a statute like that involved in the instant case, dealing with the exclusion of aliens from our shores, is one essentially relating to the foreign or external affairs of the nation cannot be doubted. The opinion in the *Curtiss-Wright* case, 299 U. S. at 318, explicitly recognized "the power to expel undesirable aliens" as a power of the Government relating to such foreign or external matters, and hence "inherently inseparable from the conception of nationality." *A fortiori*, a statute relating to the *exclusion* of aliens is in the same category. Con-

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[21] See also, on the general subject of delegation of power in the field of foreign relations, *C. & S. Air Lines* v. *Waterman Corp.*, 333 U.S. 103, 109-110; *Panama Refining Co.* v. *Ryan*, 293 U.S. 388, 421-422; *Norwegian Nitrogen Co.* v. *United States*, 288 U.S. 294, 304-305; *Hampton & Co.* v. *United States*, 276 U.S. 394, 404-411; *Field* v. *Clark*, 143 U.S. 649, 680-694.

sequently, the reasoning and conclusions of this Court in the *Curtiss-Wright* case apply with equal cogency to the case at bar. We submit, therefore, that the broad delegation made by the Act of May 22, 1918, as amended, is clearly constitutional by reason of its subject-matter—the admission and exclusion of aliens—and quite apart from the additional factor, discussed at pp. 44-51, *infra*, that it is a wartime and emergency measure.[22]

2. *The delegation is valid on the independent ground that it is limited to time of war or national emergency.*—The Act here challenged is limited in its operation, by its terms, to time of war or national emergency, and, as we have had occasion to point out previously (*supra*, pp. 29-30), neither the war nor the emergency is yet over. We submit that, apart from the fact that the delegation now challenged relates essentially to an aspect of the foreign affairs of the nation, it is valid as a measure limited in its operation to time of war or national emergency.

The war power of the national government "is not restricted to the winning of victories in the field and the repulse of enemy forces. It embraces

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[22] Compare with the statute here involved the Act of May 10, 1920, c. 174, § 1, 41 Stat. 593, which authorized the Secretary of Labor to deport such aliens who, having been convicted of violating certain designated laws, were found by the Secretary to be "undesirable residents of the United States." In *Mahler* v. *Eby*, 264 U.S. 32, 40-41, this statute was sustained as against the claim that it invalidly delegated legislative power to the Secretary of Labor.

every phase of the national defense * * *." *Hirabayashi* v. *United States*, 320 U. S. 81, 93. And "[s]ince the Constitution commits to the Executive and to Congress the exercise of the war power in all the vicissitudes and conditions of warfare, it has necessarily given them wide scope for the exercise of judgment and discretion in determining the nature and extent of the threatened injury or danger and in the selection of the means for resisting it." *Ibid.* Cf. *Yakus* v. *United States*, 321 U. S. 414, 462 (Rutledge, J., dissenting).

Perhaps the most striking illustration of the extent to which Congress may, during a war period, delegate power to executive officials is furnished by the Second War Powers Act of March 27, 1942, c. 199, § 301, 56 Stat. 176, 177 (50 U. S. C. App. 633), which founded the entire national program for rationing and allocation of material upon the following single sentence (see O'Brian and Fleischmann, *The War Production Board Administrative Policies and Procedures* (1944), 13 Geo. Wash. L. Rev. 1, 15 *et seq.*):

> Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material or of any facilities for defense or for private account or for export, the President may allocate such material or facilities in such manner, upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense.

The validity of this sweeping delegation of power to the President has been uniformly sustained. *O'Neal* v. *United States*, 140 F. 2d 908 (C.A. 6), certiorari denied, 322 U. S. 729; *United States* v. *Randall*, 140 F. 2d 70 (C.A. 2); *Gallagher's Steak House* v. *Bowles*, 142 F. 2d 530 (C.A. 2), certiorari denied, 322 U. S. 764; *Country Garden Market, Inc.* v. *Bowles*, 141 F. 2d 540 (C.A. D.C.), certiorari denied, 322 U. S. 752; *Rose* v. *United States*, 149 F. 2d 755, 760 (C.A. 9). For other examples of broad delegations of authority in wartime which have been sustained, see *Lichter* v. *United States*, 334 U. S. 742, 778-783 (authority to recapture "excessive profits" under the Renegotiation Act); *Dakota Central Tel. Co.* v. *South Dakota*, 250 U. S. 163 (authority to take possession of and operate telegraph lines "whenever he [the President] shall deem it necessary for the national security or defense"); *McKinley* v. *United States*, 249 U. S. 397 (authority conferred on the Secretary of War to do "everything by him deemed necessary" to suppress houses of ill-fame within such distance of Army posts "as he may deem needful").[23]

[23] *Ludecke* v. *Watkins*, 335 U.S. 160, discussed at pp. 30-32, *supra*, in another connection, involved a wartime statute (the Alien Enemy Act of 1798) delegating to the President broad authority to apprehend, restrain, secure, and remove from the country all alien enemies fourteen years of age and upward, to "direct the conduct to be observed, on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal, of those who, not being permitted to reside within the United States, refuse or neglect to depart there-

Keeping in mind the oft-repeated principle of this Court that "the Constitution, viewed as a continuously operative charter of government, is not to be interpreted as demanding the impossible or the impracticable" (*Opp Cotton Mills* v. *Administrator*, 312 U. S. 126, 145; *Bowles* v. *Willingham*, 321 U. S. 503, 515; *Yakus* v. *United States*, 321 U. S. 414, 424), we submit that the authority conferred on the President by the statute at bar is clearly valid as a wartime, national-emergency measure. It was enacted in the midst of World War I,[24] and its legislative history clearly indicates that it was con-

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from," and to "establish any other regulations which are found necessary in the premises and for the public safety" (335 U.S. at 161-162). While this statute does not appear to have been expressly assailed as containing an unconstitutional delegation of power, the decision sustaining it would seem to indicate implicit recognition that the broad grant of power to the executive contained in it was justified by wartime necessity.

[24] In its original form, prior to the amendment of June 21, 1941, the Act of May 22, 1918 (c. 81, § 1, 40 Stat. 559) provided:

"When the United States is at war, if the President shall find that the public safety requires that restrictions and prohibitions in addition to those provided otherwise than by this Act be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall, until otherwise ordered by the President or Congress, be unlawful—

"(a) For any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe;"

The Act of June 21, 1941 (c. 210, § 1, 55 Stat. 252) amended the initial clause so as to make it read, "When the United States is at war or during the existence of the national emergency proclaimed by the President on May 27, 1941, or as to aliens whenever there exists a state of war between, or among, two or more states," and substituted "the interests of the United States" for "the public safety."

sidered both by Congress and the President as a measure vital to the interest of national security.

The House Committee report on the bill (H.R. 10264) which became the Act of May 22, 1918 (see footnote 24, *supra*, p. 47) stated (H. Rep. No. 485, 65th Cong., 2d sess., pp. 2-3):

> The bill is intended to stop an important gap in the war legislation of the United States. When the war began in 1914 the necessity of controlling foreign travel was immediately recognized by the belligerents and all adopted stringent systems of regulation. It is a matter of common knowledge that Germany has from time to time closed her borders entirely. As soon as this country entered the war the President provided by regulations 9 and 10 of his proclamation of April 6, 1917, that German alien enemies might not enter or leave the United States without securing permission. When war was declared against Austria-Hungary similar regulations were promulgated concerning Austro-Hungarian alien enemies.
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> This measure of limitation of foreign travel was far from sufficient. * * * No argument is necessary to indicate the probability that Germany will wherever possible employ renegade Americans or neutrals as her agents instead of employing Germans about whom suspicion would easily be excited. The danger of the transference of important military information causes the Government great anxiety * * *.

> New legislation is the only remedy. In his address to Congress on December 4, 1917, the President emphasized the necessity of creating "a very definite and particular control over the entrance and departure of all persons into and from the United States." The Attorney General in his report for 1917 made a similar recommendation. The Department of Justice proceeded to draft the bill now under discussion, which was referred to and received the approval of all the other executive departments interested in the matters to which it relates. * * *
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> * * * * *
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> The power vested in the President is broad and comprehensive. * * *
>
> It is essential to meet the situation that the Executive should have wide discretion and wide authority of action. No one can foresee the different means which may be adopted by hostile nations to secure military information or spread propaganda and discontent. It is obviously impracticable to appeal to Congress for further legislation in each new emergency. Swift Executive action is the only effective counterstroke.

The debates on the House and Senate floors similarly indicate that Congress, though well aware of the great breadth of the powers the proposed legislation lodged in the President, nevertheless deemed its passage vital to the nation's interests. Thus, Congressman Flood of the House Committee on

Foreign Affairs, which reported out the bill, in appealing to the House for swift passage of the bill, and particularly to those Representatives who had expressed fear that the powers conferred were too sweeping (see 56 Cong. Rec. 6030-6032, 6063-6064), repeated, practically *verbatim*, the last paragraph of the committee report as above quoted, and added (56 Cong. Rec. 6067): "This law is urgently needed and should be passed without delay and without opposition." [25]

The purpose of the amending Act of June 21, 1941, so far as is now relevant, was to make the 1918 Act effective "during the existence of the national emergency proclaimed by the President on May 27, 1941, or as to aliens whenever there exists a state of war between, or among, two or more states" as well as "when the United States is at war." See 87 Cong. Rec. 5050, 5052, 5386-5389; H. Rep. No. 754 and S. Rep. No. 444, both 77th Cong., 1st sess., accompanying H. R. 4973.

It is thus clear from the legislative history of the statute now challenged that Congress deemed it vital to the nation's security in time of war and national emergency to confer on the President the broad authority to prohibit departure from, or entry into, the United States by aliens "except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions

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[25] For the Senate debates on the 1918 bill, see 56 Cong. Rec. 6191-6195, 6246-6248.

as the President shall prescribe," and considered any attempt to meet the problem by detailed and piecemeal legislation quite "impracticable" (*supra*, p. 49) in view of the nature of the danger that was sought to be met. Since the Constitution demands neither "the impossible" nor "the impracticable" (cases cited *supra*, p. 47), we submit that the same considerations which convinced Congress that the legislation here involved was "essential" to national security in time of war and national emergency are equally sound as reasons for upholding its constitutionality as against the challenge that it unlawfully delegates legislative power to the executive.

3. *The delegation is valid even apart from the foreign affairs aspect of the legislation and its limitation to time of war or national emergency.*—While the relationship of the Act to foreign affairs and its limitation to time of war or national emergency would seem to place beyond question the constitutionality of its delegation of authority, there is no reason to suppose that the validity of that delegation depends solely upon these factors. Considered in its historical and administrative context, the standard established by Congress—that the President should "find that the interests of the United States require" additional restrictions and prohibitions upon the entry of aliens—seems to meet the requirements which the Constitution imposes upon legislation delegating administrative authority.

"It is not necessary that Congress supply administrative officials with a specific formula for their guidance in a field where flexibility and the adaptation of the congressional policy to infinitely variable conditions constitute the essence of the program. * * * Standards prescribed by Congress are to be read in the light of the conditions to which they are to be applied. 'They derive much meaningful content from the purpose of the Act, its factual background and the statutory context in which they appear.'" *Lichter* v. *United States*, 334 U. S. 742, 785. See also *Buttfield* v. *Stranahan*, 192 U. S. 470, 494-496; *Great Northern Ry. Co.* v. *United States*, 315 U. S. 262, 273; *American Power & Light Co.* v. *S. E. C.*, 329 U. S. 90, 104. In this case, the purpose of the Act, its factual background and the statutory context in which the standard appears all demonstrate clearly that the "interests of the United States" which the President is to consider do not comprehend all the interests of the United States—*e. g.*, the public health—but only those relating to its security. See pp. 47-50, *supra*. This conclusion is confirmed by examination of the Proclamation and the administrative regulations issued thereunder. The Proclamation declares that "the exigencies of the present international situation and of the national defense require" the additional restrictions and prohibitions (Appendix A, *infra*, at p. 59). The eleven categories of aliens which the regulations authorize to be excluded by the Attorney General (Appendix A, *infra*, at pp. 62-64)

are those whose entry would menace the security of the United States.

Viewed against this background, the standard that the restrictions and prohibitions be required by "the interests of the United States" seems no more indefinite than many other single standards which this Court has upheld, on reasoning similar to that outlined in the preceding paragraph. Thus, in *New York Central Securities Corp.* v. *United States*, 287 U. S. 12, 24-25, the Court held that the phrase "public interest", as used in the Transportation Act of 1920, was not, when the purposes of that Act and the context of the provision were taken into consideration, a "concept without ascertainable criteria." Compare also *National Broadcasting Co.* v. *United States*, 319 U. S. 190, 225-226 ("public interest, convenience or necessity"); *Avent* v. *United States*, 266 U. S. 127 ("public interest"); *Sunshine Coal Co.* v. *Adkins*, 310 U. S. 381, 398 ("just and reasonable" for rate making purposes); *Federal Power Commission* v. *Hope Gas Co.*, 320 U. S. 591, 600-601 (same). See *Lichter* v. *United States, supra*, 334 U. S. at 786.

III

Having Been Lawfully Excluded Pursuant to the Act of May 22, 1918, as Amended, and the Proclamation and Regulations Thereunder, Petitioner's Status as a "War Bride" Is Irrelevant

Petitioner's contention (Br. 21-24) that her status as a "war bride" somehow invests her with an absolute right to enter the United States, re-

gardless of her excludability under the Act of May 22, 1918, as amended, and the Presidential Proclamation and executive regulations issued pursuant thereto, is clearly without merit, being predicated on a number of misconceptions.

Even a casual reading of the so-called War Brides Act of December 28, 1945 (Appendix A, *infra*, at pp. 66-67), demonstrates that it was not the purpose of Congress to exempt the alien brides of honorably discharged citizen servicemen from every requirement of the immigration laws. The statute relieves such brides only from the physical, mental, documentary (§ 1), and quota (§ 2) requirements of the immigration laws, and insists that their entry into the United States be permitted only if they are "otherwise admissible under the immigration laws" (§ 1). If resort to the statute's legislative history were thought necessary to ascertain a legislative intent so clearly expressed by the language employed, that history would confirm that Congress desired merely to facilitate the admission of alien brides whom our soldiers had married while serving overseas during World War II and to exempt them from the specified requirements of the immigration laws; but there manifestly was no intent to lay down any general relaxation of the immigration laws for such persons. H. Rep. No. 1320 and S. Rep. No. 860 accompanying H. R. 4857, both 79th Cong.,

1st sess.; 91 Cong. Rec. 11738-11739, 12342.[26] An alien war bride who does not fulfill immigration requirements not specifically excepted in the statute cannot be permitted to enter the United States. *Bonham* v. *Bouiss*, 161 F. 2d 678 (C.A. 9).

Petitioner's argument (Br. 7-8) that the Act of May 22, 1918, as amended, is not an "immigration law" within the meaning of the war brides statute represents an attempt to exalt form at the expense of substance. Citation of authority hardly is necessary to illuminate the legislative design in referring to "immigration laws." What the war brides statute contemplated was the retention of restrictions and prohibitions, other than those specifically excepted, in all statutes relating to the entry of aliens into the United States. By its title,[27] its terms, and its objectives, the 1918 Act is clearly such a statute.

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[26] "Mr. LESINSKI. Mr. Speaker, the purpose of this bill is to cut the red tape surrounding the law as it is today and expedite the admission to the United States of thousands of alien brides who were married to our soldiers while the latter were serving abroad in the armed forces of the United States during the Second World War. * * * This bill provides that these alien relatives [spouses and minor children] shall not be excluded * * * if they are found to be afflicted with physical or mental defects which would serve to debar them from permanent admission to the United States under the mandatory provisions of the law. * * *

"Mr. MARTIN of Massachusetts. In other words, all this legislation does is to waive certain possible medical defects of wives of the GI's?

"Mr. LESINSKI. That is all it does. * * * " (91 Cong. Rec. 11738).

[27] "An Act to prevent in time of war departure from or entry into the United States contrary to the public safety" (40 Stat. 559).

Finally, petitioner argues (Br. 21-22) that under the terms of the War Brides Act the war must be regarded as having ended with the President's proclamation of the termination of hostilities on December 31, 1946 (see p. 30, *supra*), and that the provisions of the 1918 Act are consequently no longer applicable by virtue of Section 5 of the War Brides Act (*infra*, p. 67). This argument, however, is based upon a manifest misconstruction of the meaning and purpose of Section 5 of the latter Act. That section provides that "*For the purpose of this Act*, the Second World War shall be deemed to have commenced on December 7, 1941, and to have ceased upon the termination of hostilities as declared by the President or by a joint resolution of Congress" [italics added]. The evident purpose of this provision is to define the duration of "the Second World War" as that phrase is used in Section 1 of the Act which limits the benefits of the act to "alien spouses or alien children of United States citizens serving in, or having an honorable discharge certificate from the armed forces of the United States during the Second World War." Under no rational interpretation of Section 5 can the limitation set forth therein be considered as extinguishing war powers exercised under other statutes. Moreover, as observed by the court below (R. 66), the provisions of the 1918 Act, as amended, apply not only in wartime, but also for the duration of the state of

emergency proclaimed by the President on May 27, 1941, which still prevails.

It should be noted that if petitioner's contentions based on the War Brides Act were sound, there would have been nothing in our laws to prevent an alien spy or saboteur from marrying one of our fifteen million soldiers and veterans of World War II and then successfully demanding admission to the United States. This palpably erroneous conclusion would suffice in itself to demonstrate the lack of merit in the arguments based on this statute, even were its terms and meaning less clear.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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APPENDIX A

1. Section 1 of the Act of May 22, 1918, c. 81, 40 Stat. 559, as amended by the Act of June 21, 1941, c. 210, § 1, 55 Stat. 252 (22 U.S.C. 223), provides in pertinent part:

> When the United States is at war or during the existence of the national emergency proclaimed by the President on May 27, 1941, or as to aliens whenever there exists a state of war between, or among, two or more states, and the President shall find that the interests of the United States require that restrictions and prohibitions in addition to those provided otherwise than by this Act be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall, until otherwise ordered by the President or Congress, be unlawful—
>
> (a) For any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe;
>
> * * * * *

2. Pursuant to the authority conferred on him by the above statute, the President, on November 14, 1941, issued Proclamation No. 2523 (6 F.R. 5821-5823), which provided in pertinent part at the time of petitioner's exclusion:[28]

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[28] This Proclamation was amended on August 17, 1949, while the instant case was pending before this Court on writ of certiorari, by Proclamation No. 2850 (14 F.R. 5173), for the terms of which see footnote 29, *infra*, pp. 60-61.

WHEREAS the act of Congress approved on May 22, 1918 (40 Stat. 559), as amended by the act of Congress approved on June 21, 1941 (* * * 55 Stat. 252) vests authority in me to impose restrictions and prohibitions in addition to those otherwise provided by law upon the departure of persons from and their entry into the United States when the United States is at war, or during the existence of the national emergency proclaimed by the President on May 27, 1941 [citing 6 F. R. 2617], or, as to aliens, whenever there exists a state of war between or among two or more states, and when I find that the interests of the United States so require; and

WHEREAS the national emergency proclaimed by me on May 27, 1941, is still existing; and

WHEREAS there unhappily exists a state of war between or among two or more states * * *; and

WHEREAS the exigencies of the present international situation and of the national defense require that restrictions and prohibitions, in addition to those otherwise provided by law, be imposed upon the departure of persons from and their entry into the United States * * *:

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, * * * do hereby find and publicly proclaim and declare that the interests of the United States require that restrictions and prohibitions, in addition to those otherwise provided by law, shall be imposed upon the

departure of persons from and their entry into the United States * * *; and I make the following rules, regulations, and orders which shall remain in force and effect until otherwise ordered by me:

* * * * *

(3) After the effective date of the rules and regulations hereinafter authorized, no alien shall enter or attempt to enter the United States unless he is in possession of a valid unexpired permit to enter issued by the Secretary of State, or by an appropriate officer designated by the Secretary of State, or is exempted from obtaining a permit to enter in accordance with the rules and regulations which the Secretary of State, with the concurrence of the Attorney General, is hereby authorized to prescribe in execution of these rules, regulations, and orders.

No alien shall be permitted to enter the United States if it appears to the satisfaction of the Secretary of State that such entry would be prejudicial to the interests of the United States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General.[29]

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[29] By Presidential Proclamation No. 2850 of August 17, 1949 (14 F. R. 5173), issued while the instant case was pending before this Court on writ of certiorari, the two subparagraphs under paragraph (3), above, were amended in the following respects:

The first subparagraph was repeated without substantive

3. Pursuant to the authority conferred by the above Presidential Proclamation, the Secretary of State, with the concurrence of the Attorney General, issued regulations (6 F.R. 5911-5918) which were from time to time amended and revised (10 F.R. 5889-5893; 10 F.R. 8995-8996, 8997-9002; 10 10 F.R. 15332, 15333-15335) and eventually codified, on July 30, 1947, as Part 175 of Title 8 of the Code of Federal Regulations (12 F.R. 5065, 5135-5142). These regulations provide in pertinent part (8 C.F.R. [1947 Supp.], Part 175; 8 C.F.R. [1949 ed.], Part 175):

PART 175—CONTROL OF PERSONS ENTERING AND LEAVING THE UNITED STATES PURSUANT TO THE ACT OF MAY 22, 1918, AS AMENDED

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change and was designated subparagraph (a) under paragraph (3).

The second subparagraph, redesignated as subparagraph (b), was amended to read: "No permit to enter shall be issued to an alien if it appears to the satisfaction of the issuing officer, or the Secretary of State, that the alien's entry would be prejudicial to the interests of the United States within the meaning of the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State with the concurrence of the Attorney General."

A third subparagraph, (c), was added. It provides: "Notwithstanding the provisions of the foregoing paragraphs (a) and (b), no alien applying for admission, even with a valid permit to enter, shall enter or be permitted to enter the United States if it appears to the satisfaction of the Attorney General that such entry would be prejudicial to the interests of the United States."

In addition to amending paragraph (3) of Proclamation No. 2523 in the particulars mentioned, Proclamation No. 2850 further provided that "All existing regulations promulgated under or pursuant to the said Proclamation No. 2523 are hereby ratified and confirmed and shall be construed to have the same effect as if included in such proclamation: *Provided, however*, that nothing contained herein shall be deemed to limit lawful authority to amend or modify such regulations."

* * * * *

§ 175.52 *Refusal of permission to enter.* (a) No permit to enter shall be issued to any alien if the permit-issuing authority has reason to believe that the entry of the alien would be prejudicial to the interests of the United States.

* * * * *

§ 175.53 *Classes of aliens whose entry is deemed to be prejudicial to the public interest.* The entry of an alien who is within one of the following categories shall be deemed to be prejudicial to the interests of the United States for the purposes of §§ 175.41 to 175.63, inclusive:

(a) Any alien who belongs to one of the classes specified in the act of October 16, 1918, as amended [anarchists, opposers of organized government, advocates of violent overthrow of the United States Government, etc.]. (* * * 8 U.S.C. 137).

(b) Any alien who is a member of, affiliated with, or may be active in the United States in connection with or on behalf of, a political organization associated with or carrying out policies of any foreign government opposed to the measures adopted by the Government of the United States in the public interest, or in the interest of national defense, or in the interest of the common defense of the countries of the Western Hemisphere, or in the prosecution of the war.

(c) Any alien in possession of, or seeking to procure, unauthorized secret information concerning the plans, preparations, equipment, or establishments for the national defense of, or the prosecution of the war by, the United States.

(d) Any alien engaged in activities designed to obstruct * * * the effectiveness of the measures adopted by the Government of the United States for the defense of the United States or for the defense of any other country, or the prosecution of the war.

(e) Any alien engaged in activities designed to obstruct * * * the effectiveness of any plans made or steps taken by any country of the Western Hemisphere in the interest of the common defense of the countries of such Hemisphere.

(f) Any alien engaged in organizing, teaching, advocating, or directing any rebellion, insurrection, or violent uprising against the United States.

(g) Any alien engaged in a plot or plan to destroy materials, or sources thereof, vital to the defense of, or the prosecution of the war by, the United States, or to the effectiveness of the measures adopted by the United States for the defense of any other country.

(h) Any alien whose admission would endanger the public safety, as provided in any Executive order issued in pursuance of the act of Congress approved June 20, 1941 (* * * 55 Stat. 252 * * *).

(i) Any alien enemy [with specified exceptions].

(j) Any alien found to be, or charged with being, a war criminal * * * or an[y] alien who has been guilty of * * * conduct contrary to civilization and human decency on behalf of the Axis countries during the present World War.

(k) Any alien who is not within one or more of the classes defined in paragraphs (a) to (j), inclusive, but in whose case circumstances of a similar character may be found to exist, which render the alien's admission prejudicial to the interests of the United States, which it was the purpose of the act of June 21, 1941 (55 Stat. 252 * * *) to safeguard.

* * * * *

§ 175.57 *Entry not permitted in special cases.* (a) Any alien, even though in possession of a permit to enter, or exempted under §§ 175.41 to 175.63, inclusive, from obtaining a permit to enter, may be excluded temporarily if at the time he applies for admission at a port of entry it appears that he is or may be excludable under one of the categories set forth in § 175.53. The official excluding the alien shall immediately report the facts to the head of his department, who will communicate such report to the Secretary of State. Any alien so temporarily excluded by an official of the Department of Justice shall not be admitted and shall be excluded and deported unless the Attorney General, after consultation with the

Secretary of State, is satisfied that the admission of the alien would not be prejudicial to the interests of the United States. Any alien so temporarily excluded by any other official shall not be admitted and shall be excluded and deported unless the Secretary of State is satisfied that the admission of the alien would not be prejudicial to the interests of the United States.

(b) In the case of an alien temporarily excluded by an official of the Department of Justice on the ground that he is, or may be excludable under one or more of the categories set forth in § 175.53, no hearing by a board of special inquiry [30] shall be held until after

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[30] Boards of special inquiry are provided for by Sections 16 and 17 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 885-887, as amended, which provide in pertinent part:

"Sec. 16 [8 U.S.C. 152]. * * * Every alien who may not appear to the examining immigrant inspector at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for examination in relation thereto by a board of special inquiry. In the event of rejection by the board of special inquiry, in all cases where an appeal to the Attorney General is permitted by this Act, the alien shall be so informed and shall have the right to be represented by counsel or other adviser on such appeal. * * *

"Sec. 17 [8 U.S.C. 153]. Boards of special inquiry shall be appointed by either the district director of immigration and naturalization designated by the Commissioner or by the inspector in charge at the various ports of arrival as may be necessary for the prompt determination of all cases of immigrants detained at such ports under the provisions of the law. Each board shall consist of three members, who shall be selected from such of the immigrant officials in the service as the Commissioner of Immigration and Naturalization, with the approval of the Attorney General, shall from time to time designate as qualified to serve on such boards. * * * Such boards shall have authority to determine whether an alien who has been duly held shall be allowed to land or shall be deported. All hearings before such boards shall be

the case is reported to the Attorney General and such a hearing is directed by the Attorney General or his representative. In any special case the alien may be denied a hearing before a board of special inquiry and an appeal from the decision of that board if the Attorney General determines that he is excludable under one of the categories set forth in § 175.51 on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest.

* * * * * *

4. The so-called War Brides Act of December 28, 1945, c. 591, 59 Stat. 659, provides in pertinent part:

> [Sec. 1 (8 U.S.C. 232)]. Notwithstanding any of the several clauses of section 3 of the Act of February 5, 1917 [8 U.S.C. 136], excluding physically and mentally defective aliens, and notwithstanding the documentary requirements of any of the immigration laws or regulations, Executive orders, or Presidential proclamations issued thereunder, alien spouses or alien children of United States

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separate and apart from the public, but the immigrant may have one friend or relative present under such regulations as may be prescribed by the Attorney General. Such boards shall keep a complete permanent record of their proceedings and of all such testimony as may be produced before them; and the decisions of any two members of the board shall prevail, but either the alien or any dissenting member of the said board may appeal * * * to the Attorney General * * *. In every case where an alien is excluded from admission into the United States, under any law or treaty now existing or hereafter made, the decision of a board of special inquiry adverse to the admission of such alien shall be final, unless reversed on appeal to the Attorney General. * * *"

citizens serving in, or having an honorable discharge certificate from the armed forces of the United States during the Second World War shall, if otherwise admissible under the immigration laws and if application for admission is made within three years of the effective date of this Act, be admitted to the United States: * * *

Sec. 2 [8 U.S.C. 233]. Regardless of section 9 of the Immigration Act of 1924, any alien admitted under section 1 of this Act shall be deemed to be a nonquota immigrant as defined in section 4(a) of the Immigration Act of 1924.

* * * * *

Sec. 5 [8 U.S.C. 236]. For the purpose of this Act, the Second World War shall be deemed to have commenced on December 7, 1941, and to have ceased upon the termination of hostilities as declared by the President or by a joint resolution of Congress.

APPENDIX B

INS: Oct. 19, 1949.
EJH:RAV/mb
File: A-6937471
In re: ELLEN KNAUFF.

Before the Attorney General in Exclusion Proceedings under 8 C.F.R. 175.57

Upon consideration of the report submitted in accordance with 8 C.F.R. 175.57(a), it is determined on the basis of confidential information, the disclosure of which would be prejudicial to the public interest, that the alien is excludable as one whose entry is deemed prejudicial to the public interest.

Accordingly, under the authority of 8 C.F.R. 175.57(b) it is ordered that the subject alien be denied a hearing before a Board of Special Inquiry and her temporary exclusion be made permanent.

J. HOWARD MCGRATH,
Attorney General.